

This letter explains the liabilities of persons selling and installing carpeting by tackless application. See, 130.1940. (This is a GIL.)

May 24, 2000

Dear Xxxxx:

This letter is in response to your letter dated March 16, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter you have stated and made inquiry as follows:

You asked me to write to you describing exactly how I purchase goods so that we can get a written explanation as to how to charges sales tax & at what rate.

1-Carpet is ordered from an 800 number out of STATE

2-Shipping

- A- ships to a distribution center owned by the mill in the CITY area & then shipped to an independent shop where it is cut & delivered to the end users location.
- B- ships to a freight terminal in CITY and than shipped to an independent shop where it is cut & delivered to the end users location

3- I than hire that shop to install via glue direct or tackless to the floor, they provide the padding, glue, tackless strip & metal needed; to install the carpet.

4- I than get a bill from the shop for installation and materials

5- I collect final payment from end user & pay the shop & mill

In the past I collected retail sales tax from the end user and filed monthly on all materials used for each job.

Please with great urgency I need a explanation from the state of Illinois what the procedure should be and what rate a tax should I be charged.

Presently my tax ID####.

I have had too many opinions on the correct way tax should be handled and need a official detailed explanation in writing to correct anything needed to be changed.

Persons who contract with customers to sell and install carpet by permanently affixing it to real estate by gluing or by tacking strips are considered to be construction contractors. Construction

contractors are considered to be the end users of the tangible personal property they permanently affix to real estate, and incur a Use Tax liability on the cost price of the tangible personal property which is permanently affixed. See, 86 Ill. Adm. Code 130.1940 (c) and 130.2075 (copy attached). Construction contractors are not responsible under these circumstances for remitting Retailers' Occupation Tax. Rather, they incur a Use Tax liability, which they should pay to their supplier. If their supplier is not registered to collect and remit the Use Tax, they should register with the Department to self-assess and remit the Use Tax. The Department will soon be issuing an informational bulletin regarding retailers who sell carpet (anticipated as FY 2000-18, available on the Department's Internet website at www.revenue.state.il.us).

We assume from the information you have provided that you purchase carpet from the STATE mill. Your letter states that the STATE mill owns and utilizes a distribution center in CITY, Illinois to which it ships carpet ordered by its Illinois-area customers. From the limited information you have provided, we believe that the presence of this distribution facility is sufficient to require the STATE mill to collect the Use Tax on its Illinois sales. As a construction contractor, you will incur Use Tax on the cost price of the carpet which you have purchased to permanently affix to a customer's premises. You should pay the Use Tax to the STATE mill. If the mill is not registered to collect the Use Tax, however, you will be required to register with the Department to self-assess and remit the Use Tax.

Your letter indicates that although you order the carpet from the STATE mill, you have subcontracted with another contractor to install the carpet. This subcontractor provides the padding, glue, tackless strip and metal needed to install the carpet. Based on this information, the subcontractor incurs Use Tax on the cost price of the padding, glue, tackless strip and metal he purchases and uses to permanently affix the carpet to real estate. The subcontractor is considered the end user of these items, just as you are considered the end user of the carpeting you have purchased for incorporation into real estate. The subcontractor should pay Use Tax to its Illinois-registered suppliers, or if the suppliers are not registered to collect Illinois Use Tax, the subcontractor should register with the Department to self-assess and remit the Use Tax.

It is important to note that construction contractors incurring Use Tax are not authorized to collect a "tax" from their customers. In this case, contractors are the end users, not retailers, of tangible personal property. Often times, tax costs are built into the contractor's overall contract price. Sometimes, the construction contract itself requires the customer to "reimburse" the contractor for his tax costs. In any event, the contractor has no legal authority to collect a "tax" from his customer. To do so constitutes an overcollection of tax. Overcollections of tax must either be remitted to the Department or refunded to the customer. A knowing overcollection of tax constitutes a Class 4 Felony. See, 35 ILCS 105/14.

Your letter seeks information regarding the proper tax rate in these transactions. The Illinois Use Tax rate for general merchandise is 6.25%. Local taxes are applicable if selling occurs in a local jurisdiction imposing a local tax. See, 86 Ill. Adm. Code 270.115 (enclosed). Generally, selling is deemed to occur at the location at which the purchase order is accepted by the retailer. If the retailer accepts the purchase order outside Illinois, but the tangible personal property which is sold is in an inventory of the retailer located in a jurisdiction imposing a local tax (or is subsequently produced in the local jurisdiction), then delivered in Illinois to the purchaser, the place where the property is

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located at the time of the sale (or subsequent production in Illinois) will determine the rate of local tax. We do not have sufficient facts to determine if local tax applies in your situation. However, it would appear that you will only incur a Use Tax liability because you state that the carpeting is not located in Illinois at the time of sale, but is later shipped here.

I hope that this information is helpful to you. If you have further questions related to the Illinois sales tax laws, please visit our Internet website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Jerilynn T. Gorden
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JTG:msk
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